

REMARKS

This is in response to the Office Action of March 26, 2008. A petition for extension of time is being concurrently filed with this Amendment; thus, this Amendment is being timely filed.

Applicants respectfully request the Examiner to reconsider the present application in view of the foregoing amendments to the claims and the following remarks.

Status of the Claims

In the present Amendment, claims 1, 3, 5, 7 and 13-16 are amended. Also, claims 2, 4 and 6 are cancelled without prejudice or disclaimer of the subject matter contained therein. The requirement for restriction having been made final, claims 17-22 are cancelled, without prejudice to their reassertion in this or a continuing application. Finally, claims 23-28 have been added. Thus, makes claims 1, 7-16 and 23-28 are pending in the present application.

No new matter is introduced with these claim amendments. For instance, claim 1 is amended to incorporate the values listed in Table 7 (page 28) of the present specification. Also, claim 3 has been amended to incorporate the subject matter from Table 9 (page 29). Similarly, claim 5 has been amended to incorporate the values from Table 8 (page 28). Further, the terminology "Form C" has been removed from some of the claims, without changing their scope, since the crystalline form to which Applicants refer as "Form C" in the specification is adequately identified and differentiated in the claims by other terminology therein. Generic process claim 7 is amended, without change in scope, to recite a processing step actively ("crystallizing") rather than passively ("is crystallized").

No new matter is introduced with the addition of claims 23-28. New claim 23 is supported by Figure 3 and in the specification at, for example, page 27, lines 24-26 (paragraph [0082]). Also, new claim 24 is supported by Figure 5 and the specification at, for example, page 28, lines 3-4 (paragraph [0084]). Support for new claim 25 is found in Figure 7 and in the specification at page 28, lines 7-9 (paragraph [0086]). Support for claims 26-28 is found in the present specification at least at page 14, lines 12-21.

Based upon the above considerations, entry of the present amendment is respectfully requested.

In view of the following remarks, Applicants respectfully request that the Examiner withdraw all rejections and allow the currently pending claims.

Issues under 35 U.S.C. § 112, First Paragraph

Claims 1 and 2 stand rejected as failing to comply with the requirements of the first paragraph of 35 U.S.C. § 112. Office Action, pages 3-6. The Examiner kindly indicates on page 4 of the Office Action that the specification is enabling for the preparation of the crystalline form of N-(3-cyano-4-methyl-1H-indol-7-yl)-3-cyanobenzenesulfonamide that is identified by the X-ray diffraction pattern shown in Figure 1. Applicants respectfully refer the Examiner to claim 1 as shown herein. Claim 1 has been amended to incorporate the values from Figure 1, or the data from Table 7, page 28 of the specification or page 22, lines 12-14 and Table 5 (page 23). Accordingly, it is respectfully submitted that all of the claims currently pending in this application comply with the requirements of the first paragraph of 35 U.S.C. § 112.

Issues under 35 U.S.C. § 112, Second Paragraph

Claims 1-6 stand rejected as failing to comply with the requirements of the second paragraph of 35 U.S.C. § 112. Office Action, pages 6-7. The Examiner contends that the crystalline form of N-(3-cyano-4-methyl-1H-indol-7-yl)-3-cyanobenzenesulfonamide being claimed was not properly identified by usage of the terminology "Form C" to refer to that crystalline form. Applicants have removed the terminology "Form C" from the claims, and the crystalline form in question is now identified by suitable parameters. Accordingly, it is respectfully submitted that all of the claims currently pending in this application comply with the requirements of the second paragraph of 35 U.S.C. § 112.

Conclusion


In view of the above amendment, applicant believes the pending application is in condition for allowance. Specifically, Applicants respectfully submit that pending claim 1 is allowable, and that claims 7-16 directed to the process of making the crystalline compound of claim 1 should be rejoined and allowed along with claim 1. Also, new claims 26-28 are also allowable as the novel compounds are recited in these composition claims.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Eugene T. Perez (Reg. No. 48,501) at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.147; particularly, extension of time fees.

Dated: SEP 19 2008

Respectfully submitted,

By 

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